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SUBJECT: U.S.-EU INVESTMENT DIALOGUE MEETING, OCTOBER 14,  
2008

11. Sensitive but unclassified, entire text.

12. (SBU) At the third face-to-face meeting of the U.S.-EU Investment Dialogue (EUID) in Washington, D.C., U.S. and Commission participants agreed that sovereign wealth funds (SWF) must demonstrate their commercial orientation, rather than pursue strategic goals, to obtain equal treatment from recipient countries. Treasury Deputy Assistant Secretary Nova Daly reminded EU officials that new U.S. procedural requirements for strategic foreign investment will speed reviews. U.S. and EU teams also agreed on outreach strategies for work iwth India, China and Russia. Treasury DAS Nova Daly led the U.S. delegation, and Mauro Petriccione, Director of Services and Investment at Directorate General for Trade led for the Commission.

#### Sovereign Wealth Funds

13. (SBU) Participants reviewed the extensive OECD work on SWF recipient country principles, including stressing transparency, proportionality and accountability and using peer monitoring to review recipient country policies. The group also discussed IMF-facilitated work within the International Working Group (IWG) of SWFs on best practices. Treasury reported that many SWFs have little experience with multilateral negotiations but have made major progress in discussing global standards. U.S. and Commission participants agreed that SWFs must demonstrate their commercial orientation, rather than pursue strategic goals, to obtain equal treatment from recipient countries. The IWG will discuss next steps.

(SBU) The EU suggested keeping SWFs as a standing agenda item and adding investments from state-owned enterprises (SOE) to accommodate a running dialogue.

#### Bilateral Investment Barriers

14. (SBU) The EUID participants discussed bilateral barriers, including a Treasury report on improvements to the Committee on Foreign Investment in the United States (CFIUS) process, under the Foreign Investment and National Security Act of 2007, in which 84% of the 147 cases closed within one 30-day review. The Commission noted that some EU investors still see U.S. procedural requirements as excessive, particularly the information that would be required under the proposed regulations. Treasury noted that the information requested under the proposed regulations reflected current practice and that requesting it in advance would speed reviews. Both sides discussed the value of the Transatlantic Economic Council considering the nexus between national security concerns and investment.

15. (SBU) The Commission reported progress on Council discussions of the proposed 3rd Energy Liberalization Package.<sup>8</sup> The Council has moved away from a 3rd country<sup>8</sup> clause that imposed a higher barrier for non-EU investors in energy transmission assets, favoring case-by-case assessment by national regulators. The

threshold for the assessment would be &security of supply<sup>8</sup> and investor compliance with EU unbundling rules. The Commission also reported the Energy Council approved a &level playing field<sup>8</sup> clause preventing vertical monopolies from buying newly unbundled energy assets. Closure on details of Commission &advice<sup>8</sup> to national regulators is likely to delay final agreement.

¶16. (SBU) On the proposed German investment review law, which would allow rejection of foreign investment in German "strategic sectors," DG Internal Market (MARKT) has informally told the Germans it was overly broad, but DG MARKT will determine the law's compatibility with EU law after it is approved (likely in Spring 2009). Petriccione said the final language may not explicitly conflict with EU law, but its application may.

#### Third Country Investment Barriers

¶17. (SBU) EUID participants discussed trade barriers in China, India and Russia. USTR reported that the U.S. and China launched Bilateral Investment Treaty (BIT) negotiations in June 2008, but there is no expectation of rapid progress. Eileen Hill of the Department of Commerce noted that the recently-held Joint Commission on Commerce and Trade meetings covered key sectoral investment issues; for example, China gives preference to Guangdong firms over foreign firms for

STATE 00120951 002 OF 002

SOE software purchases but complains about U.S. procurement discrimination against China without offering examples. Both sides have questions on the Chinese Anti-Monopoly Law (AML), particularly the security review authorized by Article 31, which China has yet to describe in detail. Petriccione said investment is one of the EU's major strategic concerns with China, and sees some regression in China's commitment to open markets. The Commission plans to hold investment seminars in China and would welcome U.S. participation. The Commission seeks U.S. views on China's understanding of key issues. Both sides agreed to hold a dedicated DVC on investment issues in China, including the AML.

¶18. (SBU) On India, the Commission just completed the 5th round of EU-India FTA discussions, including an investment chapter. The 6th round will be in India in November. The EU seeks to remove India's 49% foreign investment limit for firms, and wants progress in the postal, banking and insurance sectors. Josh Kallmer of USTR noted that the U.S. held exploratory BIT talks with India in February and June; the first round of negotiations may be in December. DG Trade noted that the communists have left the GOI ruling coalition, providing a chance to discuss key issues before parliament goes out of session in late November. Most key GOI players favor investment reforms but are constrained by political concerns. Both sides agreed their missions in India would share information on their respective talks with the GOI.

¶19. (SBU) On Russia, Petriccione expressed EU concerns over the new Russia strategic sectors law (SSL). The financial crisis has hit Russia hard, with investors fleeing and GOR rhetoric hardening. The best approach would be to keep discussions technical, offering practical advice to Russian officials. The Commission is modulating the speed of partnership and cooperation agreement (PCA) negotiations (including on investment) with Russia in the wake of developments in Georgia. Petriccione sees no WTO accession progress with Russia. Russia is also raising timber export duties, a problem for Central European Member States. The EU has postponed broad investment discussions with Russia. Kallmer of USTR replied that the U.S. has halted BIT discussions with the GOR and tension is high. Both sides agreed to consult on their respective working-level approaches.

#### Stakeholder Outreach

¶10. (SBU) Both sides agreed to improve stakeholder outreach, particularly with the Transatlantic Business Dialogue (TABD) and Transatlantic Consumer Dialogue (TACD.) The group agreed to solicit information on specific business impacts of investment barriers, and to systematize responses to stakeholder input. Several participants agreed on the need to seek greater responsiveness from consumer groups. Treasury set up an out-brief for TABD and TACD the following day.  
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